

918440

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
BED BATH & BEYOND INC.,	:
	:
Plaintiff,	:
	:
– against –	:
	:
AVIVA SPORTS, INC.,	:
	:
Defendant.	:
-----X	

07 CIV 7925 (DLC)(FM)
ECF Case
COMPLAINT

Plaintiff Bed Bath & Beyond Inc. alleges as follows for its complaint against
defendant Aviva Sports, Inc.

The Parties

1. Plaintiff Bed Bath & Beyond Inc. is a New York corporation having its principal place of business in New Jersey.
2. Defendant Aviva Sports, Inc. is a Minnesota corporation having its principal place of business in Missouri.

Jurisdiction

3. Jurisdiction is based on diversity of citizenship under 28 U.S.C. Section 1332 in that the parties are citizens of different states and the amount in controversy exceeds the sum or value of seventy-five thousand dollars exclusive of interest and costs, as alleged below.

Venue

4. Venue is proper in this district in that defendant agreed in writing that litigation between the parties shall be in this district and pursuant to 29 U.S.C. Section 1391 in that a substantial part of the events or omissions giving rise to the claim occurred in this district.

The Facts

5. In 2006 defendant agreed to sell, and plaintiff agreed to buy, a product known as the Bumper Boat, at a landed cost of approximately \$24.08 per unit for approximately 30,000 units.

6. In the spring of 2007, the Bumper Boats proved to be defective upon delivery in that, among other things, the battery contacts in the battery pack did not make secure contact with the batteries.

7. To compensate plaintiff for the loss caused by the defect, defendant agreed orally and in writing to pay plaintiff \$300,422.08.

8. Defendant has reneged on its agreement to pay plaintiff.

First Claim For Relief

9. Plaintiff is entitled to recover \$300,422.08 from defendant under the terms of their agreed compromise, with interest.

Second Claim For Relief

10. If the compromise stated above is not enforced by the court according to its terms, plaintiff is entitled to recover \$623,675.24 from defendant to compensate for plaintiff's losses arising from the defect in the Bumper Boats, together with an additional

charge of twenty percent, amounting to \$124,725.15, pursuant to Section 9.0 of plaintiff's Vendor Compliance Guide and terms and conditions thereto, which were agreed to by defendant in writing.

Wherefore, plaintiff demands judgment against defendant:

On the first claim for relief, for \$300,422.08, with interest; and

On the second claim for relief, for \$748,350.89, with interest;

all with the costs and disbursements of the action.

Dated: New York, NY
September 10, 2007

LESTER SCHWAB KATZ & DWYER, LLP
120 Broadway
New York, NY 10271
212 964-6611
Attorneys for Plaintiff BED BATH & BEYOND INC.

s/
Dennis M. Rothman (dr-0384)